

“The Validity and Infringement of US Patents: A Comprehensive Empirical Examination”

International Decision Sciences Institute
Bali, Indonesia
July 10-13, 2013

Abstract

Using a population of approximately 2,500 litigated patent infringement cases decided since 2003 by either a US district court or the US Court of Appeals for the Federal Circuit, the federal appeals court with exclusive appellate jurisdiction over patent cases, we conduct the most comprehensive empirical study yet done of the validity and infringement of litigated patents. The portion of the study examining patent validity decisions is an update and major expansion of a study published by two of the authors in 1998 in the *American Intellectual Property Law Ass’n Quarterly Journal*. Not only have several changes in patent law occurred since the publication of that study, but we now have access to data sources unavailable at that time and we have developed a number of new analytical techniques for generating more knowledge about court decisions on the validity and infringement of patents. We perform a detailed statistical analysis of the many legal grounds for judicial decisions invalidating or upholding patents, the reasoning employed, the stage of the proceedings at which these decisions were made. We also code decisions that the evidence is sufficiently close that no final decision is possible at that point and that further proceedings are necessary. Data about the stages at which decisions are made is important because each decision or non-decision has an impact on the strategy of the disputants in settlement negotiations. We perform similar analyses in the infringement portion of the study.